

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	
Petition by the Minnesota Public Utilities)	CC Docket No. 96-45
Commission For Agreement to Redefine)	DA-04-999
the Service Area of Twelve Minnesota)	
Rural Telephone Companies)	

**REPLY COMMENTS OF
MINNESOTA INDEPENDENT COALITION**

The Minnesota Independent Coalition and seventy-four rural telephone companies that are members of the MIC (collectively the “MIC”) submit these Reply Comments in response to the April 12, 2004 Public Notice and in response to the Comments of Midwest Wireless Communications, LLC (“Midwest Wireless”) filed on May 28, 2004. The Minnesota Public Utilities Commission (“MPUC”) filed a Petition to redefine the service areas of twelve rural telephone companies in Minnesota (the “MPUC Petition”). Nine of these rural telephone companies are members of the MIC.¹ The MPUC Petition includes a request to redefine the service areas of eleven Incumbent Local Exchange Carriers (“ILECs”) below the wire center level, with that request including nine MIC members and 15 wire centers served by those MIC Members. For the reasons set forth below, the Commission should reject the arguments of Midwest Wireless and deny the Petition to redefine any service areas below the wire center level.

¹ Members of the MIC include Mid-State Telephone Company (TDS Telecom), Scott-Rice Telephone Company, Federated Telephone Company, Melrose Telephone Company, Winsted Telephone Company (TDS Telecom), Eckles Telephone Company, Lakedale Telephone Company, Farmers Mutual Tel Co, and CenturyTel of Minnesota, Inc. (CenturyTel).

1. Midwest Wireless Overstates The Authority Of The Minnesota PUC And Mischaracterizes The Commission's Role Under Section 54.207.

While Midwest Wireless acknowledging that both the Commission and a state must agree to redefinition of a service area under 47 C.F.R. § 54.207, Midwest Wireless mischaracterizes the Commission's role as being subordinate to the state's recommendation. Midwest Wireless asserts:

[U]nless it has relinquished jurisdiction to the FCC, only a state may to (sic) determine whether it is in the public interest to designate a competitor such as Midwest in all or part of an ILEC's service area. This authority necessarily extends to deciding whether to designate a competitor in less than an entire ILEC wire center.²

The inference is that the State has exclusive jurisdiction to decide whether an ETC designation is effective at levels below the wire center. That position, however, is contrary to the role of the Commission under Rule 54.207 and 47 U.S.C. § 214(e)(5).

Section 214(e)(5) clearly provides that the service area of a rural telephone company "means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company." There is no indication in Section 214(e)(5) of any subordination of the Commission's role on this issue, much less any support for the position that the State's role is exclusive.

Similarly, Rule 54.207 does not indicate any subordination of the Commission's role, noting that "the Commission will consider [the state's] proposed definition [of service area] in accordance with the procedures set forth in this paragraph. Rule 54.207(c).

Accordingly, Midwest's argument to subordinate the Commission's role to the Minnesota PUC should be rejected.

² Midwest Wireless Comments at p. 2.

2. Midwest Wireless Fails To Recognize The Policy Stated In *Highland Cellular*.

Midwest also argues that the Commission should defer to the Minnesota PUC's failure to apply the policy decision reflected in *Highland Cellular* (to limit redefinition of service areas) and make that policy decision subject to evaluation by the Minnesota PUC and other states. To the contrary, the Commission should apply its policy that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation.

That policy was clearly stated in *Highland Cellular*, which reads:

[W]e conclude that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. ... A rural telephone company's wire center is an appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county and/or town lines.³

This statement is clearly intended to apply uniformly and to establish "minimum" criteria and is not intended to be subject to evaluation for necessity by the states.

However, Midwest argues that the application of this clear statement of Commission policy should be subordinate to the Minnesota PUC's determination of whether that policy is appropriate or necessary. That argument should be rejected.


³ *Memorandum Opinion and Order*, In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carriers in the Commonwealth of Virginia, FCC 04-37, CC Docket No. 96-45, released April 12, 2004, ¶ 33.

Summary.

For the reasons set forth above, the Commission should reject the arguments of Midwest Wireless and apply its clearly stated and recently adopted policy of making a rural telephone company's wire center the minimum size for redefinition of service areas.

Dated: June 9, 2004

Respectfully submitted,

By 
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CERTIFICATE OF SERVICE

I, Kim R. Manney, a secretary in the law office of Moss & Barnett, hereby certify that I have, on this 9th day of June, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Reply Comments of Minnesota Independent Coalition* filed today to the following:

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